

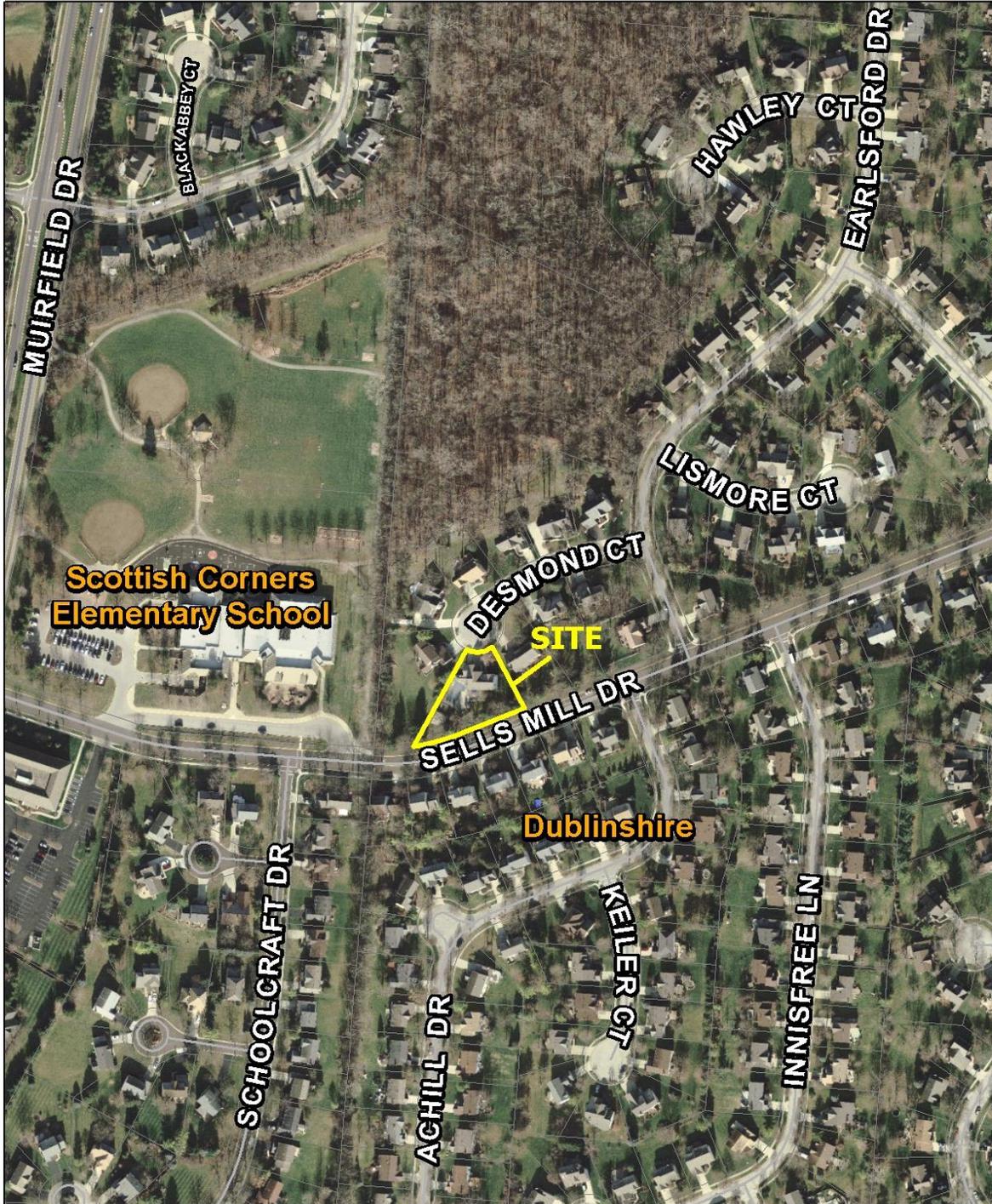
Planning Report

Thursday, November 19, 2015

Earl Residence - Desmond Court

Case Summary

Agenda Number	3
Case Number	15-107V
Location	5735 Desmond Court South side of Desmond Court approximately 310 feet west of the intersection with Earlsford Drive.
Proposal	To construct a fence that encroaches up to 14 feet into the rear yard setback and five feet into the side yard setback.
Request	Non-use (area) variance to Sections 153.080(A) and (B) to permit a fence that encroaches into the side and rear yard setbacks. Requires review and approval by the Board of Zoning Appeals based on the review criteria of Zoning Code Section 153.231.
Applicants	Gregory Earl, owner.
Planners:	Tammy Noble, Senior Planner and Logan Stang, Planning Assistant
Planning Contact:	(614) 410-4649 or tflading@dublin.oh.us & (614) 410-4652 or lstang@dublin.oh.us
Planning Recommendation	Disapproval of a Variance to the Side and Rear Yard Setbacks. Based on Planning's analysis, the request does not meet the review criteria for a non-use (area) variance. Therefore, Planning recommends disapproval of a fence that extends into side and rear yard setbacks.



 <p>City of Dublin</p>	<p>15-107V Non-Use Variance Earl Residence 5735 Desmond Court</p>	<p>0 150 300 Feet</p> 
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Facts	
Site Description	The 0.467 acre site contains a single-family home, a pool surrounded by a six-foot privacy fence, two decks and a concrete basketball court. The pie-shaped, cul-de-sac lot has 50 feet of frontage on Desmond Court and abuts Sells Mill Drive at the rear. Other attributes of the site include a 15-foot easement, to the rear of the property, and a walking path that connects to the Scottish Corners Elementary School.
Zoning	PUD, Planned Unit Development; Dublinshire subdivision.
Surrounding Zoning and Uses	The site is surrounded by residential development, zoned PUD, Planned Unit Development, Dublinshire subdivision.
Proposal	The applicant is proposing to construct a four-foot, split-rail fence that will extend from an existing six-foot privacy fence in the west portion of the property to an existing fence of the adjacent property owner to the east. An additional fence is proposed to extend from the edge of the southeast portion of the house to the existing fence along the east property line. Both of the fences will encroach five feet into the side yard setback and the southern fence will encroach 14 feet at the furthest point into the rear yard setback.

Details	Setback Variances
Process	Zoning Code Section 153.231(C)(3) allows the Board of Zoning Appeals to approve requests for non-use (area) variances only in cases where the Board finds there is evidence of a practical difficulty present on the property, limiting conformance to the strict requirements of the Zoning Code. The Board is required to make a finding that the required review standards have been appropriately satisfied (please refer to the last page of this report for the full wording of the review standards).

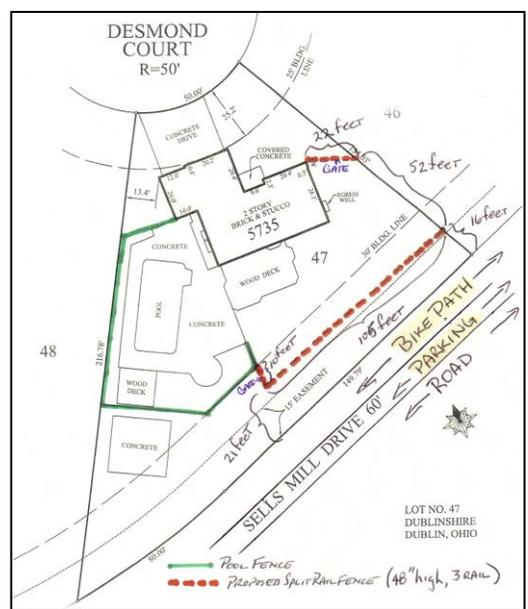
Details **Setback Variances**

Variance Request

Section 153.080(B)(1)(a) of the City of Dublin Zoning Code requires that open fences shall be not greater than four feet in height and located only within the buildable area of the lot (meeting all setback requirements).

The applicant is requesting permission to install a four-foot high split rail fence that would be placed within the side and rear yard setbacks. The fence would extend up to nine feet into the rear yard setback, southeast of the pool, and 14 feet along the east property line. An additional fence is proposed along the south side of the house and will extend to the adjacent fence along the east property line. The variance would permit both of the fences on the east side property line, for a variance of five feet into the side yard setback. Setbacks are created to allow open view shed and natural areas of separation, between buildings.

The applicant is proposing to maximize the area of the yard that is enclosed within the fence in order to separate their dog from the bike path and parking along Sells Mills Drive. The fence would connect at the existing privacy fence around the pool and would travel east connecting to the neighbor's fence at 5727 Desmond Court. It's important to note that the neighbor's fence was constructed prior to the current fence regulations and is non-conforming.



Analysis **Setback Variances**

ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET

Analysis	Setback Variances
(1) Special Conditions	<p>Standard Not Met. The applicant’s request is based primarily on their intent of maximizing the area of the yard enclosed by a fence and minimizing cost of the fence construction, and maintaining resale value of the property. These conditions present on this site are commonly occurring and lack the special conditions, such as shape, topography, or natural features that would make it impractical to meet the regulations.</p>
(2) Applicant Action/Inaction	<p>Standard Met. The lot was created and the adjoining fence already constructed before the applicant took ownership of the property. Therefore, the applicant took no action or inaction that impacted the buildable area of the lot or the non-conforming fence along the property line.</p>
(3) No Substantial Adverse Effect/ Hinder Intent of Regulation	<p>Standard Not Met. The purpose of this fence regulation is to prevent perimeter fences along side and rear property lines that “close off” properties from adjacent properties. At some point the neighboring fence will be required to come into compliance with the Code should it cease to be maintained. The applicant’s request will materially impair the intent of this regulation by entirely enclosing the rear and sides of the property.</p>
<i>AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET</i>	
<p>(1) Special Privileges</p> <p>(2) Recurrent in Nature</p> <p>(3) Delivery of</p>	<p>The following standards have been reviewed with the finding that one standard is met.</p> <p>Standard Not Met. The Board has reviewed similar requests that are common in older, residential areas. The Board has denied all other applications with similar conditions. If the Board were to approve the applicant’s request, it would afford the applicant a special privilege that has not been provided to other property owners with similar conditions. The applicant is still able to construct a substantial fence to enclose a large portion of the yard.</p> <p>Standard Not Met. The Board has reviewed no more than one or two similar requests a year. This number of variance requests is not exorbitant and does not constitute a recurring issue that would be better resolved through a Code amendment. In fact, as noted above, the regulation was written to prevent what the applicant is requesting.</p> <p>Standard Met.</p>

Analysis	Setback Variances
Governmental Services (4) Other Method Available	The request would not impact the delivery of governmental services. Standard Not Met. The applicant would be able to construct a fence that meets applicable zoning regulations and still have a large yard, located within a permitted fenced area. This would be a viable option for the applicant and therefore.

Recommendation	Disapproval
Disapproval	Based on Planning’s analysis, the request does not meet the review criteria for a non-use (area) variance. Therefore, Planning recommends disapproval of a fence that extends into side and rear yard setbacks.

NON-USE (AREA) VARIANCES

Section 153.231(H)(1) Variance Procedures

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development requirements of this Code unreasonable and, therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the Board of Zoning Appeals shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

Non-Use (Area) Variances. Upon application, the Board of Zoning Appeals shall only approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this Report for the full wording of the review standards):

(a) That all of the following three findings are made:

- (1) *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this Chapter would involve practical difficulties. Special conditions or circumstances may include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question.*
- (2) *That the variance is not necessitated because of any action or inaction of the applicant.*
- (3) *Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this Chapter.*

(b) That at least two of the following four findings are made:

- (1) *That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter.*
- (2) *The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.*
- (3) *The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).*
- (4) *The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.*